

UNITED STATES DISTRICT COURT

for the

Northern District of California

In re DMCA Subpoena to YouTube, LLC

Plaintiff

v.

Defendant

Civil Action No. 3:21-mc-80136

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: YouTube, LLC

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

See Attachment 1.

Place: MARSHALL SUZUKI LAW GROUP, LLP
230 California Street, Suite 415
San Francisco, CA 94111

Date and Time:

6/28/2021 10:00 a.m.

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 6/3/21

Susan Y. Soong
CLERK OF COURT

Felicia Brown

Signature of Clerk or Deputy Clerk

OR

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Toho Co., Ltd., who issues or requests this subpoena, are:
Junji Suzuki, Esq.; MARSHALL SUZUKI LAW GROUP, LLP, 230 California Street, Suite 415, San Francisco, CA 94111;
junji@marshallsuzuki.com; (415) 618-0090

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* _____
 on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

 _____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
 _____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT 1

REQUEST FOR PRODUCTION

All information sufficient to identify: (a) each infringer identified under the column entitled as "YouTube Channel/User" in Exhibit A; and (b) any other users registered with www.youtube.com who uploaded and/or posted any Infringing Work specified under the column entitled as "Infringing Work" in Exhibit A. The infringers referred to in the foregoing (a) and (b) are collectively referred to as "Infringers" or individually as "Infringer". Exhibit A referred to herein is included in the notice dated June 1, 2021, which is attached to this subpoena. The information requested in this subpoena shall be from any and all sources, including but not limited to billing or administrative records that prove the following information used by each Infringer from the date six (6) months before the date of production in response to this subpoena to date, and at the time the Infringing Work was uploaded on www.youtube.com:

1. Any and all information showing all names, addresses (including postal codes and addresses used for address (PIN) verification (<https://support.google.com/youtube/answer/171664?hl=en>) and Google AdSense account (<https://support.google.com/youtube/answer/72902?hl=en>; https://www.google.com/adsense/start/#!#%3Fmodal_active=none));
2. Any and all information showing access log (including dates, times, IP addresses, and access type) of Google account and Google AdSense account, including access log for each login (namely, login history) and at the time the Infringing Work was uploaded on www.youtube.com; and
3. Any and all information showing (a) all names, telephone numbers, and addresses (including postal codes), any payment method, including but not limited to credit card holders, bank accounts¹, registered with; and (b) the type of the monetization feature(s) in the YouTube Partner Program (<https://support.google.com/adsense/answer/72857?hl=en>), if any used by the Infringer, the type of the payment method, and the name of the company or financial institution associated with such payment method registered with Google and Google AdSense accounts and/or used for each of the foregoing monetization feature(s).

¹ <https://support.google.com/adsense/answer/1714398>

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TOKYO FLEX LAW OFFICE
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MAIL abuse@flex-law.gr.jp
Attorney for TOHO Co., Ltd.

June 1, 2021

Via Email

YouTube, LLC
Attn: Copyright Operations/ DMCA Complaints
901 Cherry Ave
San Bruno, CA 94066
Phone: 650-214-3010
Email: copyright@youtube.com

RE: NOTIFICATION OF COPYRIGHT INFRINGEMENT
(Pursuant to 17 U.S.C. § 512)

To whom it may concern:

I represent Toho Co., Ltd., a Japanese corporation (hereinafter called “TOHO ”), the owner of the copyrighted works identified under the column entitled “Original Work” in Exhibit A attached to this notice (“Exhibit A”).

It has recently come to TOHO ’s attention that certain users of your services have unlawfully published and posted certain contents on your website located at www.youtube.com, more specifically identified under the column entitled “Infringing Work” in Exhibit A (referred to as the “Infringing Work”), corresponding to each of the Original Work identified in Exhibit A.

TOHO has a good faith belief that the Infringing Work is not authorized by the copyright owner, its agent, or the law.

We demand that you immediately disable access to the Infringing Work and cease any use, reproduction, and distribution of the Original Work. Specifically, we request that you remove or disable the Infringing Work from www.youtube.com and/or any of your system or services.

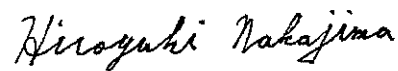
We also request a written assurance that you have fully complied with our request.

I declare that the information in this notice is accurate, and under penalty of perjury, that I am authorized to act on behalf of the owner of the exclusive right of the Original Work that is infringed.

Your immediate response will be appreciated.

Very truly yours,

HiroYuki Nakajima
Attorney at Law

A handwritten signature in cursive script that reads "HiroYuki Nakajima". The signature is written in black ink and is positioned below the typed name and title.

	Title of Original Work	Author of Original Work	Original Work	Infringing Work	Title of Infringing Work	YouTube Channel/User (Name/ Profile Page on YouTube.com)
1	シン・ゴジラ	Toho Co., Ltd.	http://shin-godzilla.jp/	https://www.youtube.com/watch?v=1LV6xZ79cGI	【映画紹介】エヴァンゲリオン公開記念！！庵野監督が描くシンゴジラ！【シン・ゴジラ】	【映画紹介】バンフレットムービー https://www.youtube.com/channel/UCbaDDFsERtABbxDuAa2gT0g
2	君の隣をたべたい	Toho Co., Ltd.	https://www.toho.co.jp/movie/lineup/kimisui.html	https://www.youtube.com/watch?v=biK3B4nnWII	【映画紹介】彼女の秘密を知ってしまい、振り回される僕の物語【君の隣をたべたい】	【映画紹介】バンフレットムービー https://www.youtube.com/channel/UCbaDDFsERtABbxDuAa2gT0g
3	告白	Toho Co., Ltd.	https://www.toho.co.jp/movie/lineup/kokuhaku/	https://www.youtube.com/watch?v=xEvVfegiDnQ	お母さん殺しちゃった！エイズになった少年は母親を刺し殺した「告白」	映画紹介ドットコム https://www.youtube.com/channel/UCXDrPTAxxbQBUBBFdYxjIQ/
4	寄生獣	Toho Co., Ltd.	https://www.toho.co.jp/movie/lineup/kiseiju.html	https://www.youtube.com/watch?v=ZIMyFJUJIs	【映画紹介】いただきまあ〜すけと旦那、朝食に嫁を喰うの巻【寄生獣】	映画紹介ドットコム https://www.youtube.com/channel/UCXDrPTAxxbQBUBBFdYxjIQ/
5	進撃の巨人 ATTACK ON TITAN	Toho Co., Ltd.	https://www.toho.co.jp/movie/lineup/singeki.html	https://www.youtube.com/watch?v=hr4YgPvniFk	【進撃の巨人】スマイル0円♪笑顔の巨人が人間をベロリンチョする映画【前編】	映画紹介ドットコム https://www.youtube.com/channel/UCXDrPTAxxbQBUBBFdYxjIQ/
6	ドラゴンクエスト ユア・ストーリー	Toho Co., Ltd.	https://www.toho.co.jp/movie/lineup/dq-movie.html	https://www.youtube.com/watch?v=oO9xmKfIqgA	【映画紹介「ドラクエ」ピアンカとフローラ、結婚するならどっち！？寝すぎる主人公が選んだ花嫁は○○○○【ドラゴンクエスト ユア・ストーリー】	映画紹介ドットコムの友達 https://www.youtube.com/channel/UCGkt4S-s9Tb8WnssYzORRGA/
7	恋は雨上がりのように	Toho Co., Ltd.	https://www.toho.co.jp/movie/lineup/koiaime-movie.html	https://www.youtube.com/watch?v=nw9RKKBN5_c	【映画】恋は雨上がりのように28歳年上のバツイチ男が好きになってしまった10代の少女	10分 MOVIE https://www.youtube.com/channel/UCIEpRxZiOtwLb-EljksA_w
8	神様の言とおりの	Toho Co., Ltd.	https://www.toho.co.jp/movie/lineup/kamisamanoiu-toori.html	https://www.youtube.com/watch?v=Gkbwy_bn0E4	【映画ネタバレ】死ぬ気で生き残れ【神様の言とおりの】ネタバレ	映画モノ https://www.youtube.com/channel/UCaV30LT2xKhDJ-Hg9bIcnbg
9	神様の言とおりの	Toho Co., Ltd.	https://www.toho.co.jp/movie/lineup/kamisamanoiu-toori.html	https://www.youtube.com/watch?v=dYkNSV8A2Vw	女の子の股を死ぬまで引く張る映画のあらすじ「神様の言とおりの」	Yu映画チャンネル https://www.youtube.com/channel/UCvfaN7LCn96fXp6KzUbhqQ
10	悪の教典	Toho Co., Ltd.	https://www.toho.co.jp/movie/lineup/akunokyouten/index.html	https://www.youtube.com/watch?v=Xlx2a3dAYMU	肉関係の生徒を猟銃を使い皆殺しする映画のあらすじ「悪の教典」	Yu映画チャンネル https://www.youtube.com/channel/UCvfaN7LCn96fXp6KzUbhqQ